Ketua Pengarah Hasil Dalam Negeri v Aneka Jasaramai Ekspress Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1–14–2 OF 2000
RAUS J
9 AUGUST 2003

Revenue Law — Income tax — Deciding order of Special Commissioners — Whether the SC misdirected themselves in law or proceeded without sufficient evidence in law

Revenue Law — Income tax — Source of income — Whether proceeds of sale in Singapore was income accrued in or derived from Malaysia — Income Tax Act 1967 ss 3 and 12

The respondent was a company incorporated in Malaysia, operating express bus services, to and forth cities in Malaysia and also to and forth Singapore—KL/Ipoh/Penang. Passengers embarking the buses in Singapore would purchase their tickets in Singapore by using Singapore currency. The respondent was assessed to tax in respect of the income from the sale of tickets in Singapore for years of assessment from 1990 to 1998. The Special Commisioners of Income Tax ('the SC') made the deciding order on 28 January 2000 which held that the proceeds of the respondent from the sale of bus tickets in Singapore was not income accrued or derived from Malaysia. The respondent appealed against the said assessment.

Held, dismissing the appeal with costs:

The court would only interfere with the SC's deciding order when the SC misdirected themselves in law or proceeded without sufficient evidence to justify their conclusion. In the instant case, the SC had considered the surrounding circumstances in their totality and had correctly interpreted ss3 and 12(1) of the Income Tax Act 1967. The learned judge emphasized that the court is slow to disturb the finding of facts of the SC, which when there is ample evidence to support the SC's findings (see para 8).

[**Bahasa Malaysia summary**

Responden adalah sebuah syarikat yang ditubuhkan di Malaysia, menjalankan perkhidmatan bas ekspres, yang berulang alik dari bandaraya-bandaraya di Malaysia dan juga berulang alik dari Singapura—KL/Ipoh/Penang. Penumpang-penumpang yang menaiki bas di Singapura akan membeli tiket mereka di Singapura dengan menggunakan matawang Singapura. Responden telah ditaksirkan cukai berkaitan pendapatan daripada jualan tiket-tiket di Singapura untuk tahun-tahun taksiran dari tahun 1990 hingga 1998. Pesuruhjaya Khas Cukai Pendapatan ('PK') telah membuat perintah keputusan pada 28 Januari 2000 yang memutuskan bahawa hasil responden dari jualan tiket-tiket bas diSingapura bukan pendapatan yang terakru atau diperolehi dari Malaysia. Responden telah merayu terhadap penaksiran tersebut.

Diputuskan, menolak rayuan dengan kos:

Mahkamah hanya boleh campur tangan dengan perintah keputusan PK apabila PK telah salah arah dalam undang-undang atau meneruskan tanpa keterangan yang mencukupi untuk menjustifikasikan keputusan mereka. Dalam kes semasa, PK telah menimbangkan keadaan sekeliling secara keseluruhan dan telah mentafsir ss 3 dan 12(1) Akta Cukai Pendapatan 1967 dengan betul. Hakim yang arif telah menekankan bahawa mahkamah sepatutnya tidak campur tangan dengan penemuan fakta PK, yang mana terdapat keterangan yang mecukupi untuk menyokong penemuan PK tersebut (lihat perenggan 8).]

Notes

For cases on deciding order of Special Commissioners, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2167.

For cases on source of income, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2297–2298.

Cases referred to

I Investment Ltd v Comptroller-General of Inland Revenue [1975] 2 MLJ 208 (refd)

Cooper v Stubb 1 OTL 29 (refd)

Legislation referred to

Income Tax Act 1967 ss 3, 12(1)

Abu Tariq (Shafini bte Abdul Samad with him) (Legal Division, Inland Revenue Board) for the appellant.

Francis Tan (Azman Davidson & Co) for the respondent.

Raus J:

Appeal

[1] This is an appeal by the Director of Inland Revenue Board ('the appellant') by way of case stated against the deciding order of the Special Commissioners of Income Tax ('Special Commissioners') made on the 28January 2000. The Special Commissioners via the deciding order held that proceeds of the respondent from the sale of bus tickets in Singapore was not income accrued in or derived from Malaysia.

Facts

[2] The respondent is a company incorporated in Malaysia with its registered office at No 2, Jalan Bendahara, 31650 Ipoh, Perak Darul Ridzuan. The respondent operates an express bus service to and forth, Johor Bahru to Penang, Penang to Kuala Lumpur and several other routes. For the routes

which end at Johor Bahru, the respondent has been granted permission by the Public Transport Council of Singapore to operate the buses in the Republic of Singapore. For the routes from Singapore to Kuala Lumpur, Ipoh and Penang, passengers embarking the buses in Singapore purchased their tickets in Singapore by using Singapore currency. The tickets are sold by the agents in Singapore. The respondent was assessed to tax in respect of the income from the sale of tickets in Singapore with its income in respect of the sales of tickets in Malaysia for years of assessment from 1990 to 1998. The respondent has appealed against the said assessments, contending that the income from the sales of the bus tickets in Singapore is not income accruing in or derived from Malaysia, thus, it is not assessable to Malaysian income tax.

Issue

[3] The issue to be determined in this appeal is whether the income of the respondent for the years of assessment beginning in 1990 to 1998 from the sale of bus tickets in Singapore is income accruing or derived from Malaysia.

[4] Clearly, this issue relates to the construction and application of certain provisions of Income Tax Act 1967 ('the Act') in particular ss 3 and 12. For ease of reference, the two sections are reproduced which reads as follows:

3 Change of income tax

Subject to and in accordance with this Act, a tax to be known as income tax shall be charged for each year of assessment upon the income of any person accruing in or derived in Malaysia or received in Malaysia from outside Malaysia.

12 Derivation of Business Income in Certain Cases

(1) Where for the purpose of this Act, it is necessary to ascertain any gross income of a person derived from Malaysia a business of his, then —

(a) Subject to subsection (2), so much of the gross income from the business is not attributable to operations of business carried on outside Malaysia shall be deemed to be derived from Malaysia.

(b) Notwithstanding paragraph (a), if the business consists wholly or partly of the manufacturing, growing, mining, producing or harvesting in Malaysia of any article, product, produce or other thing —

(i) the gross income from any sale of the article, product, produce or other thing taking place outside Malaysia in the course of carrying on the business;

or

(ii) when the article, product, produce or other thing is exported in the course of carrying on the business and sub-paragraph (1) does not apply, an amount equal to the market value of the article, produce, product or other thing at the time of its export, shall be deemed to be gross income of that person derived from Malaysia from the business.

Findings of the Special Commissioners

[5] The Special Commissioners unanimously held that the income of the respondent for the years of assessment beginning from 1990 to 1998 from the sale of bus tickets in Singapore is accrued in Singapore and not derived from Malaysia. The Special Commissioners allowed the respondent's appeal and ordered the respondent's assessments to be reduced accordingly.

Findings of this court

[6] The duty of this court in this type of cases is well said by Raja Azlan Shah FJ (as his Majesty then was) in the case of *I Investment Ltd v Comptroller-General of Inland Revenue* [1975] 2 MLJ 208 follows (at p 212):

> It has been said more than once that when we come to deal with income tax cases, we must look at all surrounding circumstances, not for the purpose of considering what one's own concluding might be, but for the purpose of seeing, in fact, whether there is evidence upon which the Special Commissioners could arrive at their conclusion. There are consideration, no doubt, the only way, and Mr Prinson strongly called my attention to them, to which if I were a judge of fact, I should certainly have given active consideration, but it is also important that I shall not slip into it. The question is of course, a question of circumstances and degree, and there is no justification for reversing the determination of the Special Commissioners unless they have misdirected themselves in law or proceeded without sufficient evidence in law to justify their conclusion.

[7] Thus, the question before me, is whether looking at the surrounding circumstances of this case, this court has any justification to reverse the determination of the Special Commissioners. I have considered the submission advanced by the appellant, and with respect, I am unable to agree with the contention that the Special Commissioners acted without any evidence or have misdirected themselves in arriving at the finding that the income from the sale of the tickets in Singapore did accrue in or derive in Malaysia. To me, that there are ample evidence to support the Special Commissioner's findings. The evidence clearly shows that the sale of tickets took place in Singapore. The contract was entered in Singapore. The money was received in Singapore. These were findings of facts and as such, this court should be slow to disturb such findings. This principle of law is well settled. In *Cooper v Stubb* 1 OTL 29, Warrington LJ said:

> The Commissioners are the judges of fact, and this Court, and every Court of Appeal from the Commissioners which has jurisdiction in questions of law only, is very much tempted, when it feels that it cannot agree with the Commissioners in the finding of fact, to find some reason in law by which that finding can be reversed. In my opinion the Court of Appeal ought to be careful not to yield to that temptation, except in very clear cases where either the Commissioners have come to their conclusion without evidence which would support it, that is to say, have to a conclusion which on the evidence no reasonable person could arrive at, or have misdirected themselves in point of law.

[8] Based on the facts of this case, I am of the view that the Special Commissioners did not act without any evidence or have misdirected themselves in concluding that the income from the sale of the tickets in

Singapore did not accrue in or derive in Malaysia. I am also of the view that Special Commissioners have correctly interpreted ss 3 and 12(1) of the Act and have not misdirected themselves in respect of the application of those sections to the facts as founded.

[9] Thus, I find that the findings of the Special Commissioners as in the case stated does not suffer from any of the infirmities justifying the intervention of this court. Accordingly, I hold that the decision of the Special Commissioners is a correct decision in law.

[10] For reasons aforesaid, this appeal by the appellant is dismissed with costs.

Plaintiff's appeal dismissed with costs.

Reported by Rinchen Tee